

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 23rd day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Yan Fang Wu,

_____*Petitioner,*

-v.-

No. 05-6507-ag
NAC

Alberto R. Gonzales, Attorney General, United States Department of
Justice,

Respondents.

FOR PETITIONER: Norman Kwai Wing Wong, New York, New York.

FOR RESPONDENTS: Paul I. Perez, United States Attorney, Karin B. Hoppmann, Judy K. Hunt, Assistant United States Attorneys, Appellate Division, Tampa, Florida.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND

DECREED that the petition for review of the Board of Immigration be DENIED.

Petitioner Yan Fang Wu, a native and citizen of China, seeks review of a November 25, 2005 order of the BIA affirming the May 5, 2004 decision of Immigration Judge (“IJ”) Alan A. Vomacka denying petitioner’s application for asylum, withholding of removal and relief under the Convention Against Torture (“CAT”). *In re Yan Fang Wu*, No. A 97 385 317 (B.I.A. Nov. 25, 2005), *aff’g* No. A 97 385 317 (Immig. Ct. N.Y. City May 5, 2005).

When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency’s factual findings, including adverse credibility determinations, under the substantial evidence standard.

Regardless of the merits of the IJ decision, petitioner never challenged the IJ’s discretionary denial of asylum before the BIA. Nothing in petitioner’s notice of appeal or brief to the BIA even obliquely mentions the IJ’s discretionary decision to deny her asylum. Therefore, we will not review the IJ’s decision discretionarily denying Wu asylum. *See Ivanishvili v. U.S. Dep’t of Justice*, 433 F.3d 332, 343 (2d Cir. 2006); 8 U.S.C. §1252(d)(1). Moreover, the Government correctly argues that a review of the IJ’s alternative ground for denying asylum would be futile. *See Cao He Lin*, 428 F.3d at 401 (stating that remand is not required when the IJ also rests her determination on an acceptable independent basis). Substantial evidence supports the IJ’s adverse credibility finding, and thus justified the IJ’s denial of her withholding of removal claim.

_____The IJ found that the evidence in the record suggests that Wu does not have a real risk of

being tortured. The IJ's finding is reasonable. The report cited by Wu in her brief does not suggest that an individual in Wu's position, someone who left China without permission, is more likely than not to be tortured. As a result, the IJ's finding denying her CAT claim is supported by substantial evidence in the record.

_____ Wu argues that the BIA's "Summary Denial of Appeal" did not meet the 8 C.F.R. § 1003.1(e)(4) standard for a decision without an opinion and was inappropriate and violated her constitutional rights to a meaningful appeal. We have already rejected this challenge to the BIA's streamlining procedures. *Yu Sheng Zhang*, 362 F.3d at 160. This Court lacks jurisdiction to review a BIA member's decision to resolve a particular appeal unilaterally, and without opinion, pursuant to 8 C.F.R. § 1003.1(e)(4), rather than referring it to a three-member panel. *Kambolli v. Gonzales*, 449 F.3d 454, 463 (2d Cir. 2006).

For the foregoing reasons, the petition for review is DENIED. The pending motion for a stay of removal in this petition is DENIED as moot.

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: _____

